

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Radio Bonners Ferry, Inc.	)	File Number EB-02-ST-197
Licensee of AM Radio Station KBFI	)	NAL/Acct. No. 200332980001
Bonnors Ferry, Idaho	)	FRN 0007741952
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: October 2, 2002

By the Enforcement Bureau, Seattle Office:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Radio Bonners Ferry, Inc., licensee of AM radio station KBFI, Bonners Ferry, Idaho, apparently willfully violated Section 73.49 of the Commission's Rules ("Rules")<sup>1</sup> by failing to enclose its antenna structure within an effective locked fence or other enclosure. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>2</sup> that Radio Bonners Ferry, Inc., is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

**II. BACKGROUND**

2. On May 21, 2002, agents from the FCC Enforcement Bureau's Seattle Field Office inspected the antenna structure of radio station KBFI(AM) in Bonners Ferry, Idaho. The agents observed that the fencing around the antenna structure was leaning and the gate was unable to be closed or locked. The antenna structure had radio frequency potential at the base.

3. The Seattle Field Office issued a Notice of Violation to Radio Bonners Ferry, Inc., on June 7, 2002, detailing the violation. Radio Bonners Ferry, Inc., replied on June 24, 2002, stating that the old fence had been torn down. On July 24, 2002, Radio Bonners Ferry, Inc., notified the Seattle Field Office that construction of a new fence had been completed and submitted a picture of the new fence.

**III. DISCUSSION**

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with

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<sup>1</sup> 47 C.F.R. § 73.49.

<sup>2</sup> 47 U.S.C. § 503(b).

any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>3</sup>

5. Section 73.49 of the Rules states in part that "[a]ntenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences or other enclosures." Station KBFI's antenna system is series-fed. The AM transmission fencing requirements thus apply to station KBFI. The May 21, 2002, inspection of the KBFI antenna structure found the fence enclosing the antenna structure leaning and the gate unable to be securely closed, allowing access to the radiating tower. Effective base fencing is an important safety requirement. AM series-fed antenna structures radiate energy that renders any physical contact with the antenna structure itself extremely dangerous. In addition, AM antenna structures are capable of generating radio frequency fields at the base of the antenna structure that may exceed the Commission's maximum permissible exposure guidelines. Effective base fencing is thus important to prevent possible contact with the radiating structure and excessive radio frequency radiation exposure.

6. Based on the evidence before us, we find that on May 21, 2002, Radio Bonners Ferry, Inc., willfully violated Section 73.49 of the Rules by failing to provide an effective locked fence or other enclosure around their antenna structure. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),<sup>4</sup> and Section 1.80 of the Commissions Rules,<sup>5</sup> for failure to comply with AM tower fencing is \$7,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>6</sup> We note that Radio Bonners Ferry, Inc., did replace the entire old fence with a new fence. However, corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeiture or violations.<sup>7</sup> Considering the entire record and applying the factors listed above, this case warrants a \$7,000 forfeiture.

#### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>8</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>9</sup> Radio Bonners Ferry, Inc. is hereby NOTIFIED of this APPARENT

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<sup>3</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>4</sup> 12 FCC Rcd 17087 (1997), *recon. Denied*, 15 FCC Rcd 303 (1999).

<sup>5</sup> 47 C.F.R. § 1.80(b)(4).

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> *KASA Radio Hogar, Inc.*, 17 FCC Rcd 6256 (2002).

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for willful violation of Section 73.49 of the Rules by failing to provide effective locked fences for its antenna towers.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Radio Bonners Ferry, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the NAL/Acct. No. and FRN referenced above.

10. Request for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.<sup>10</sup>

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and must include the NAL/Acct. No. and the FRN referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

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<sup>10</sup> See 47 C.F.R. § 1.1914.

14. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Bonners Ferry, Inc., KBFI-AM, 327 Marion Avenue, Sandpoint, Idaho 83864.

FEDERAL COMMUNICATIONS COMMISSION

Dennis J. Anderson  
District Director, Seattle Office  
Enforcement Bureau